

**Minutes of Meeting  
BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
January 25, 2005 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

William Paulette, presiding officer, presided. No Board members were present.

Joseph Haughwout appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case  
Lic = Licensing Application  
RF = Recovery Fund Claim  
Trades = Tradesmen Application

C = Complainant/Claimant  
A = Applicant  
R = Respondent/Regulant  
W = Witness  
Atty = Attorney  
Rep = Representative

Participants

- |   |   |
|---|---|
| 1. Fox Construction Group Inc<br>File Number 2004-04238 (Disc)                                | Rebecca Walton – C<br>Lynn Snyder – W                     |
| 2. Joseph Edward Miller<br>t/a Miller's Roofing<br>File Number 2005-00959 (Disc)              | Miller – R<br>Michael Mitchell – W<br>Jeffrey Buckley – W |
| 3. Randy Wayne Pulley<br>t/a PWP<br>File Number 2004-01677 (Disc)                             | Doris Reed – C  |
| 4. Billy L Magnuson<br>t/a Mag.Net Construction & Properties<br>File Number 2004-01664 (Disc) | Magnuson – R<br>James Madson – C                          |
| 5. Billy L Magnuson<br>t/a Mag.Net Construction & Properties<br>File Number 2004-03388 (Disc) | Magnuson – R<br>Dennis Gaskin – C                         |
| 6. Remodel USA Incorporated<br>File Number 2004-03300 (Disc)                                  | Philip Antoun – C   |

7. Brian K Barnett  
t/a B & T Ent  
File Number 2004-01908 (Disc)
8. Brian K Barnett  
t/a B & T Ent  
File Number 2005-00178 (Disc)
9. Millenium Quests  
t/a American Dream Consultants (Norfolk CI)  
File Number 2004-01775 (Disc)
10. Millenium Quests  
t/a American Dream Consultants (Norfolk CI)  
File Number 2004-02724 (Disc)

Terry Barnette – R Rep  
Jeffrey Lightner – C  
Nancie Lightner – C

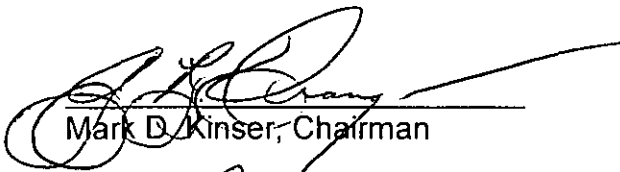
Terry Barnette – R Rep

Stephen Roberts – C  
Belinda Roberts – C

Margaret Bentley – C  
Leonard Bentley – W

The meeting adjourned at 2:45 p.m.

#### BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

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Custodian of Records

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Fox Construction Group Inc.

File Number: 2004-04238  
License Number: 2705029111

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Fox Construction Group Inc. ("Fox Construction") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Dr. Rebecca Walton ("Walton"), Complainant; Lynn Snyder ("Snyder"), Witness; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member. Neither James Fox, Responsible Management for Fox Construction, nor anyone on its behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain seven of the provisions required by the Board's regulations. Fox Construction's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

In November 2003, Walton entered into a contract with Fox Construction to perform renovations at the subject property. Fox Construction obtained the building permit for the work at the subject property. In December 2003, Wiltshire Electric, a subcontractor for Fox Construction, obtained the electrical permit to install a new electrical system at the

subject property. In April 2004, a Fairfax County building inspector inspected the subject property. The inspector later issued a Corrective Work Order to Fox Construction to fix a bathroom exhaust fan that was not vented to the exterior, in violation of the building code. Fox Construction failed to abate the building code violation.

During the IFF, Lynn Snyder stated the sheriff has not been able to serve Fox Construction with the Corrective Work Order and the building code violations have not been abated. Lynn Snyder also stated Fairfax County cannot proceed with prosecution for the building code violations until service is made upon Fox Construction and a Notice of Violation is issued, which Fox Construction does have an opportunity to appeal.

Fox Construction's failure to abate the building code violation is a violation of Board Regulation 18 VAC 50-22-260.B.25. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

In May 2004, the Board's agent requested Fox Construction to provide a written response and supporting documents to the complaint filed with the Board. Fox Construction failed to respond to the Board's agent's request.

Fox Construction's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$2,500.00 be imposed.

By: \_\_\_\_\_  
William Paulette  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: July 22, 2004 (revised October 20, 2004)

FILE NUMBER: 2004-04238  
RESPONDENT: Fox Construction Group, Inc.  
LICENSE NUMBER: 2705029111  
EXPIRATION: June 30, 2005

SUBMITTED BY: Shereil Queen  
APPROVED BY: Linda Boswell

COMMENTS:

None.

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Fox Construction Group, Inc. ("Fox") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705029111).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On April 13, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Rebecca Walton ("Walton") regarding Wiltshire Electric. (Exh. C-1)

On November 5, 2003, Walton entered into a written contract with Fox, in the amount of \$18,500.00, to perform renovation work at 5936 Bangor Drive, Alexandria, Virginia. (Exh. C-2 and C-5)

On November 7, 2003, Fox obtained building permit number 03309B0490 to build dormers and change the pitch of the roof at the subject property. (Exh. W-1 and W-2)

On December 3, 2003, Wiltshire Electric obtained electrical permit number 03337E0210 to install a new electrical system at the subject property. (Exh. W-1 and W-2)

On December 31, 2003, Walton and Fox amended the contract and deleted the electrical work, at a cost of \$1,600.00. (Exh. C-5)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
  - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The contract used by Fox in the transaction failed to contain subsections: (a), (b), (c), (d), (e), (f), and (h). (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

FACTS:

On April 5, 2004, Robert Johnston ("Johnston"), Combination Inspector, of the Residential Inspections Division in Fairfax County, inspected the subject property. (Exh. W-4)

On June 1, 2004, Johnston issued a Corrective Work Order to Fox for a bathroom exhaust fan installed without being vented to the exterior, in violation of Section 501.3 of the Virginia Uniform Statewide Building Code. Johnston directed Fox to correct the defect within 10 days to avoid a Notice of Violation being issued. (Exh. W-4)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On May 7, 2004, Investigator Sherell Queen, the Board's agent, made a written request, via regular First Class mail and certified mail, to Fox at the address of record of 7220 Telegraph Square Drive, Unit V, Lorton, Virginia, 22079, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by May 28, 2004. (Exh. I-1 and I-2)

On June 7, 2004, the certified mail was returned to the Board's agent by the United States Postal Service ("USPS") and marked "Unclaimed." (Exh. I-2a)

As of July 22, 2004, Fox failed to respond to an investigator seeking information in the investigation of a complaint filed with the Board.

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Joseph Edward Miller, t/a Miller's Roofing  
Virginia Beach, VA 23451-6500

File Number 2005-00959  
License Number 2705060078

**CONSENT ORDER**

Respondent Joseph Edward Miller, t/a Miller's Roofing ("Joseph Edward Miller") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

**Board's 2003 Regulations provides:**

**18 VAC 50-22-200. Remedial education, revocation or suspension; fines.**

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On December 6, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Joseph Edward Miller ("Miller"), t/a Miller's Roofing to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joseph Miller, Respondent; Michael Mitchell and Jeffrey Buckley, Witnesses; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member.



The Amended Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

During the IFF, Miller stated he attempted to satisfy the judgment by contacting Barnard's attorney, but was informed the attorney did not represent Barnard. During the IFF, Michael Mitchell stated their attorney advised them not to contact Barnard directly, but to contact Barnard's attorney in regards to satisfying the judgment. Miller subsequently contacted Barnard directly and set up a payment plan to pay off the judgment and received a receipt from Barnard.

The Board and Joseph Edward Miller, as evidenced by the signatures affixed below, enter into this Consent Order. Joseph Edward Miller knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Joseph Edward Miller acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Amended Report of Findings. Joseph Edward Miller consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.28	\$2,500.00
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	TOTAL		\$2,500.00

In addition, the Board waives the imposition of the \$,2500.00 monetary penalty for Count 1 provided Joseph Edward Miller satisfies the judgment and provides proof of satisfaction within sixty (60) days of entry of this order. If Joseph Edward Miller fails to satisfy the judgment and provide proof of satisfaction, then the monetary penalty will be automatically imposed.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within thirty days of the effective date of this consent order unless otherwise specifically noted above. Joseph Edward Miller acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Joseph Edward Miller will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

**Joseph Edward Miller acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Joseph Edward Miller's license until such time as there is compliance with all terms of this Order.**

**Joseph Edward Miller understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.**

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

\_\_\_\_\_  
Joseph Edward Miller  
t/a Miller's Roofing

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF \_\_\_\_\_  
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2005.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SO ORDERED:**

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Board for Contractors

BY: \_\_\_\_\_  
Louise Fontaine Ware, Secretary

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VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

AMENDED  
REPORT OF FINDINGS

BOARD: Virginia Board for Contractors  
DATE: October 18, 2004 (revised November 8, 2004)

FILE NUMBER: 2005-959  
RESPONDENT: Joseph Edward Miller, t/a Miller's Roofing  
LICENSE NUMBER: 2705060078  
EXPIRATION: January 31, 2005

SUBMITTED BY: Investigator Wayne J. Ozmore, Jr.  
APPROVED BY: Lead Investigator Janet Creamer

COMMENTS:

None.

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Joseph Edward Miller ("Miller"), t/a Miller's Roofing, was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705060078).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On August 13, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received information from Eric Olson ("Olson"), Executive Director for the Board for Contractors, regarding Miller. (Exh. C-1)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On January 21, 2003, in the Virginia Beach General District Court, Antoinette Barnard was awarded a \$4,250.00 judgment against Miller for breach of contract and warranty in roof repair. (Exh. C-2)

In the week of September 27, 2004, Miller's employee stated Miller has been trying to satisfy the judgment through Mr. Douglas, the attorney who represented Barnard. (Exh. I-1)

In a written response dated September 29, 2004, Miller stated, "Our records reveal that I tried to comply with the terms of the judgment through Ms. Banards attorney on several occasions. I was informed that she is not a client and that they had no record of her case on file." (Exh. R-1)

As of November 8, 2004, Miller failed to satisfy the judgment. (Exh. I-4)

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Randy Wayne Pulley, t/a PWP

File Number: 2004-01677  
License Number: 2705078290

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Randy Wayne Pulley ("Pulley"), t/a PWP to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Unclaimed."

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Doris Reed ("Reed"), Complainant; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member. Neither Randy Pulley, Respondent, nor anyone his behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to include one of the provisions required by the Board's regulations. Pulley's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend that a monetary penalty of \$200.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

In August 2003, Reed entered into a verbal agreement with Pulley to perform electrical work at the subject property. Reed paid Pulley for the work, which was performed by a subcontractor. Pulley told the Board's agent he did not use a contract because he did not want to be involved in the electrical portion of the work. Pulley further stated he received the payment for the electrical work in order to pay the subcontractor.

During the IFF, Reed stated she paid Pulley to hire the electrician to perform the electrical work at the subject property. She further stated Pulley told her that he needed her to pay him so that he could pay the electrician.

In my opinion, Pulley's performing of the electrical work, through a subcontractor, was an extension of work under contracts he had previously entered into with Reed. Therefore, Pulley did use a written contract, but did not execute a change order to perform the additional electrical work.

Therefore, I recommend that Count 2 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.8.

Count 3: Board Regulation (Effective January 1, 2003)

The electrical work at the subject property was performed in August 2003. In September 2003, Reed obtained the permit for the electrical work.

During the IFF, Reed affirmed that she pulled the permit for the electrical work.

Pulley's failure to obtain an electrical permit prior to performing work is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

The electrical subcontractor failed to install the plug for the stove, light fixture, and switch cover and wire the meter box.

During the IFF, Reed stated she hired another contractor to complete the electrical work.

In my opinion, Reed paid Pulley for the electrical work, and the electrician Pulley hired failed to complete the work.

Pulley's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$1,000.00 and license revocation be imposed.

By: \_\_\_\_\_  
William Paulette  
Presiding Board Member  
  
Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.



VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: June 24, 2004 (revised September 7, 2004)

FILE NUMBER: 2004-01677  
RESPONDENT: Randy Wayne Pulley, t/a PWP  
LICENSE NUMBER: 2705078290  
EXPIRATION: July 31, 2005

SUBMITTED BY: E. Nathan Matthews  
APPROVED BY: James Guffey

COMMENTS:

None.

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Randy Wayne Pulley, t/a PWP ("PWP"), was at all times material to this matter a licensed Class C Contractor in Virginia (No. 270578290).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On October 14, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Doris Reed ("Reed") regarding PWP. (Exh. C-1)

On December 12, 2002, Reed obtained building permit number 1208-2003 to remove and replace the porch. (Exh. C-4)

Reed entered into a written contract with PWP, in the amount of \$1,495.00, to perform renovations at 9311 Rocky Run Lane, Amelia, Virginia 23002. (Exh. C-2 and R-1)

Reed entered into a second written contract with PWP, in the amount of \$1,900.00, to perform plumbing work at the subject property. (Exh. C-2 and R-1)

On July 17, 2003, Reed paid PWP \$400.00 as the down payment on the second written contract. (Exh. C-3)

In August 2003, PWP performed the plumbing work at the subject property. While PWP performed the plumbing work, Reed told PWP she needed some electrical work done. (Exh. I-4)

PWP gave Reed a quote for running wires, installing receptacles, and putting a new breaker box in at the subject property. (Exh. R-1) In August 2003, Reed entered into a verbal agreement with PWP, in the amount of \$1,500.00, to perform the electrical work. (Exh. I-4)

At the time of the verbal agreement, Reed paid PWP \$500.00 for materials and \$1,500.00 for plumbing work. (Exh. C-3)

On August 20, 2003, Reed paid PWP \$1,550.00 to complete the electrical work. (Exh. C-3)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contracts used by PWP in the transaction failed to contain subsection: (h) contractor's address, license number, expiration date, class, and specialty services. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

In a written response, received on November 19, 2003, PWP stated "I didn't fill no contracts out, or write no proposals out because I didn't want to be involved with the electrical part of the job, so I left that up to them [meaning Reed and the subcontractor]." PWP also stated "I did received some money to give to him a down payment then the rest when he was finished. I did all the organizing and paid him for her all out of kindness." (Exh. R-1)

Pulley failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed, signed by all parties, prior to commencing work.

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On September 3, 2003, Reed obtained building permit number 493-2003 for the electrical upgrade. (Exh. I-2)

Pulley failed to obtain a permit prior to performing electrical work at the subject property.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

PWP returned to the property with a subcontractor to perform the electrical work. (Exh. I-4)

As of January 21, 2004, PWP failed to install the plug for the stove, light fixture, and switch cover and wire the meter box. (Exh. I-4)

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Billy L. Magnuson, t/a Mag.Net Construction & Properties

File Number: 2004-01664  
License Number: 2705058003

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Billy L. Magnuson ("Magnuson"), t/a Mag.Net Construction and Properties to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Billy Magnuson, Respondent; James Madson ("Madson"), Complainant; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective September 1, 2001)

The contract used in the transaction failed to contain two of the provisions required by the Board's regulation.

During the IFF, Magnuson stated that he did in fact have a plain language exculpatory clause in his contract. This was verified by a review of the record.

Magnuson's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend that a monetary penalty of \$200.00 be imposed.

Count 2: Board Regulation (Effective September 1, 2001)

In September 2002, James and Kimberli Madson ("the Madsons") entered into a contract with Magnuson to build an addition at the subject property. Magnuson charged the Madsons extra charges for siding and extending the deck at the subject property. Magnuson told the Board's agent that several changes were made.

During the IFF, Madson stated the changes to the work were agreed to verbally with Magnuson. Magnuson also affirmed this was the case, and further stated other changes to the project were also agreed to verbally, rather than in writing.

Magnuson's failure to use written change orders modifying the scope and costs of the work performed is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend that a monetary penalty of \$500.00 be imposed.

Count 3: Board Regulation (Effective September 1, 2001)

The contract specified work would begin two weeks from the date of contract, and would be completed twelve weeks from the date of contract. The contract was signed on September 21, 2002, and work began on October 13, 2002. Magnuson last worked on the property in early December 2002, failing to finish the project. The Madsons hired other contractors to complete the work, some of which they did themselves.

During the IFF, Magnuson stated that delays in the starting of the project were attributable to the City of Norfolk planning board. Magnuson also stated further delays were caused by changes requested by Kimberli Madson. Magnuson further stated he suffered a heart attack in December, prior to the estimated completion date in the contract. Magnuson also stated that his subcontractors were directed to continue working while he was hospitalized.

Based on the transcript, and the appearance and demeanor of Magnuson, I do not find his testimony to be credible.

In my opinion, Magnuson took advantage of Madson, and failed to complete the work.

Magnuson's failure to complete work and comply with the terms of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 4: Board Regulation (Effective September 1, 2001)

The Madsons paid Magnuson a total of \$39,100.00 towards the contract amount of \$47,000.00. The Madsons also paid Magnuson's electrical subcontractor, who claimed he was not paid for work performed. In February 2003, the Madsons requested Magnuson refund \$10,734.00 for the cost of subcontractors. Magnuson has not returned any money to the Madsons.

During the IFF, Madson stated Magnuson has not paid him any monies, as requested.

During the IFF, Magnuson stated he did not return any money to the Madsons because he spent more than \$20,000.00, out of his own pocket, in changes requested by Kimberli Madson.

Based on the transcript, and the appearance and demeanor of Magnuson, I do not find his testimony to be credible.

Magnuson's retention and misapplication of funds is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed.

By: \_\_\_\_\_  
William Paulette  
Presiding Board Member  
  
Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: June 2, 2004 (revised September 7, 2004)

FILE NUMBER: 2004-01664  
RESPONDENT: Billy L. Magnuson, t/a Mag.Net Construction & Properties  
LICENSE NUMBER: 2705058003  
EXPIRATION: September 30, 2004

SUBMITTED BY: Robert Hansel  
APPROVED BY: David Dorner

COMMENTS:

Magnuson did disclose his prior criminal convictions on the license applications.

On December 12, 2002, Mag.Net LLC registered in the Commonwealth of Virginia; however, on December 31, 2003, Mag.Net LLC was cancelled by the State Corporation Commission for fee delinquency.

On January 22, 2004, Investigator Robert Hansel conducted a site visit.

\*\*\*\*\*

Billy L. Magnuson ("Magnuson"), t/a Mag.Net Construction & Properties, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705058003).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violations of the Code of Virginia and/or Board's regulations:

BACKGROUND:

On October 21, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from James and Kimberli Madson ("the Madsons") regarding Magnuson. (Exh. C-1)



On September 21, 2002, the Madsons entered into a written contract with Magnuson, in the amount of \$47,000.00, to build an addition at 8216 Tabor Court, Norfolk, Virginia. (Exh. C-2)

On or about October 13, 2002, Magnuson commenced work. (Exh. I-2)

On October 16, 2002, Magnuson obtained building permit number 02-00011156 for the work to be performed at the subject property. (Exh. C-5 and I-3)

On December 23, 2002, the Madsons obtained mechanical permit number 02-00013796 for the installation of the HVAC unit at the subject property. (Exh. C-5)

On December 26, 2002, the City of Norfolk conducted the framing and insulation inspections of the subject property. (Exh. C-5)

\*\*\*\*\*

1. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Magnuson in the transaction failed contain subsections: (d) and (i). (Exh. C-2)

2. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

Magnuson charged the Madsons an additional \$800.00 for "matching siding" and \$500.00 for two additional feet added to the deck. (Exh. I-2)

In a written response dated November 28, 2003, Magnuson admitted several changes were made. (Exh. R-1)

Magnuson failed to use written change orders, signed by all parties, for modifications to the scope of the work, costs, and materials.

3. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The contract specified "Work to commence within 2 week(s) from date of this contract and to be fully completed within 12 week(s) from date of this contract." (Exh. C-2)

Magnuson last performed work on the subject property in early December 2002. (Exh. I-2)

In late December 2002, the Madsons hired another contract to complete the drywall. In January 2003, the Madsons hired other contractors and performed some work themselves. (Exh. I-2)

On January 16, 2003, a final inspection was approved; however, a certificate of occupancy has not been issued because the final inspection for the gas line was disapproved with penalty on September 5, 2003. (Exh. I-3)

On February 22, 2003, the Madsons sent Magnuson a certified letter regarding Magnuson's failure to fulfill the contract. (Exh. C-6)

Magnuson failed to complete the work contracted for and comply with the terms of the contract.

4. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

On September 21, 2002, the Madsons paid Magnuson \$10,000.00 by check. On October 23, 2002, the Madsons paid Magnuson \$20,000.00 by check. On November 8, 2002, Jim Madson paid Magnuson \$3,000.00 in cash, which was to be repaid to the Madsons. On November 15, 2002, the Madsons paid Magnuson \$6,100.00 by check. (Exh. C-3)

The Madsons also paid Barry Diggs ("Diggs"), t/a Diggs Electrical, for work performed at the subject property because Magnuson failed to pay Diggs, who refused to return to work until he was paid. (Exh. I-2)

On February 22, 2003, the Madsons sent Magnuson a certified letter requesting a refund of \$10,734.00 for the cost of the subcontractors. (Exh. C-6)

As of February 2, 2004, Magnuson failed to return money received for work not performed or performed in part. (Exh. I-2)

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Billy L. Magnuson, t/a Mag.Net Construction & Properties

File Number: 2004-03388  
License Number: 2705058003

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Billy L. Magnuson ("Magnuson"), t/a Mag.Net Construction & Properties to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Billy Magnuson, Respondent; Dr. Dennis Gaskin ("Gaskin"), Complainant; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective September 1, 2001)

In August 2002, Gaskin entered into a contract with Magnuson to perform improvements to the subject property. The contract specified work would begin two (2) weeks from the date of the contract, and completed within ten (10) weeks from the date of the contract. Magnuson did not begin work until late September 2002. As of January 2003, Magnuson still had not completed work.

During the IFF, Magnuson stated he applied for the permit the day after the contract was signed. Magnuson further stated the project was delayed for a period of twelve (12) weeks because of permitting issues with the City of Norfolk.

In my opinion, Magnuson should have obtained an extension on the contract to reflect the delays caused by the permitting process with the City of Norfolk.

Magnuson's failure to obtain signed written change orders modifying the contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 2: Board Regulation (Effective September 1, 2001)

Because Magnuson had not completed work, Gaskin hired another contractor, Boone Builders, to complete the work. Ronald Boone ("Boone") of Boone Builders informed the Board's agent that when Boone visited the subject property, he discovered that after nine (9) months, the work was less than fifty (50) percent complete.

During the IFF, Gaskin stated he hired Boone Builders to complete the work.

During the IFF, Magnuson stated he suffered a heart attack in December, prior to the estimated completion date in the contract. Magnuson stated the dry-in stage of the project had been completed. Magnuson also stated that his subcontractors were directed to continue working while he was hospitalized. Magnuson further stated he was willing to complete the work, but Gaskin decided to hire another contractor.

Based on the transcript, and the appearance and demeanor of Magnuson, I do not find his testimony to be credible.

Magnuson's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

\_\_\_\_\_  
William Paulette  
Presiding Board Member

Board for Contractors

Date:

\_\_\_\_\_

### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: November 4, 2004 (revised November 19, 2004)

FILE NUMBER: 2004-03388  
RESPONDENT: Billy L. Magnuson  
LICENSE NUMBER: 2705058003  
EXPIRATION: September 30, 2004

SUBMITTED BY: David C. Dorner  
APPROVED BY: M. Wayne Brown

COMMENTS:

License will lapse on April 1, 2005.

\*\*\*\*\*

Billy L. Magnuson ("Magnuson"), t/a Mag.Net Construction & Properties, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705058003).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On February 18, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Dr. Dennis Gaskin ("Dr. Gaskin") regarding Magnuson. (Exh. C-1)

On August 7, 2002, Magnuson entered into a written contract, in the amount of \$33,000.00, with Dr. Gaskin to convert a room over the garage into a weight/recreation room at 1112 Cottage Place, Norfolk, Virginia 23503. (Exh. C-2)

On August 8, 2002, Dr. Gaskin paid Magnuson \$16,500.00 by check. (Exh. C-3)

In late September 2002, Magnuson commenced work. (Exh. I-2)

On November 15, 2002, Magnuson obtained building permit number 02-012239 BRAD 00. (Exh. I-1)

As of January 2003, Magnuson failed to complete the dry-in. (Exh. C-1)

\*\*\*\*\*

1. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The contract specified, "Work to commence within 2 week(s) from date of this contract and to be fully completed within 10 week(s) from date of this contract." (Exh. C-2)

In a hand-written note dated January 28, 2003, Magnuson stated, "I came by to see when we could start back to work." (Exh. C-1)

Magnuson failed to obtain a written change order, signed by both parties, for a modification to the original contract.

2. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

Dr. Gaskin hired Boone Builders to complete the job at the subject property. On May 9, 2003, Boone Builders provided Dr. Gaskin an invoice, in the amount of \$26,000.00 for work performed at the subject property. (Exh. C-4) On May 21, 2003, Dr. Gaskin paid Boone Builders \$26,000.00 by check. (Exh. C-3)



In a letter dated October 12, 2004, Ronald Boone of Boone Builders stated, "When I met Dr. Gaskins at this home, I was surprised to find that after 9 months of work, the addition to his home was less than 50 percent complete, with only the framing work finished."  
(Exh. W-1)

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Remodel USA Incorporated

File Number: 2004-03300  
License Number: 2705057342

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Remodel USA Incorporated ("Remodel USA") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Philip Antoun ("Antoun"), Complainant; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member. Neither John Cherubin, Responsible Management for Remodel USA, nor anyone on its behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

During the IFF, Antoun stated Remodel USA entered into an arbitration agreement. Antoun also stated, as of today, Remodel USA paid Antoun \$10,000.00 and Antoun expects to receive four more payments.

Count 1: Board Regulation (Effective September 1, 2001)

The contract used in the transaction failed to contain three of the provisions required by the Board's regulation. Remodel USA's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$200.00 be imposed.

Count 2: Board Regulation (Effective September 1, 2001)

In May 2002, Antoun entered into a contract with Remodel USA to install a deck, two windows, and French doors at the subject property. Remodel USA obtained the permit to build a deck, but did not obtain the permits required to install the windows and the French doors. Remodel USA's failure to obtain required permits is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 3: Board Regulation (Effective September 1, 2001)

Antoun and Remodel USA agreed to a change in the contract which established the sizes of the two tier deck as being 12' x 20' and 9' x 12'. Remodel USA shortened the deck by ten (10) feet, without agreeing to a change order first.

During the IFF, Antoun stated he saw the framing for a 20' deck and asked a worker about the different size deck being built. Antoun also stated the worker told him that the project manager told the worker to shorten the deck to 20' because the step down would not fit. Antoun stated Remodel USA did not advise him that changes had to be made to accommodate for a design flaw.

Remodel USA's failure to use signed, written change orders modifying the scope of work is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 4: Board Regulation (Effective September 1, 2001)

In August 2002, Antoun noticed the French doors leaked during rainstorms. Antoun also noticed several other items that were done incorrectly. In September 2002, the final inspection of the work was rejected because the building plans were not on site. In January 2004, the final inspection was rejected because of construction errors. Antoun was later informed the deck was not warranted because of improper installation and the best course of action would be for the entire deck to be reinstalled.

During the IFF, Antoun stated he tore the deck down and had the deck rebuilt because he was selling the house. Antoun also tore out all the walls to rectify problems with the walls and windows.

Remodel USA's action of improperly performing work is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

In March 2004, the Board's agent requested Remodel USA to provide a written response and supporting documents to the complaint filed with the Board. Remodel USA submitted a response, but the response did not address the allegations in the complaint. The Board's agent contacted Remodel USA, by telephone and by fax, requesting a more detailed response. Remodel USA did not provide the Board's agent with a more detailed response, as requested.

Remodel USA's failure to provide complete information to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By: \_\_\_\_\_

William Paulette  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: April 27, 2004 (revised October 19, 2004)

FILE NUMBER: 2004-03300  
RESPONDENT: Remodel USA Incorporated  
LICENSE NUMBER: 2705057342  
EXPIRATION: July 31, 2006

SUBMITTED BY: Sherell D. Queen  
APPROVED BY: Linda Boswell

COMMENTS:

None.

\*\*\*\*\*

Remodel USA Incorporated ("Remodel USA") was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705057342).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On February 11, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Philip Antoun ("Antoun") regarding Remodel USA. (Exh. C-1)

On May 5, 2002, Antoun entered into a written contract with Remodel USA, in the amount of \$23,693.00, to install a deck, two windows, and a French door at 16309 Bromal Court, Chantilly, Virginia. (Exh. C-2)

On May 14, 2002, Antoun signed a contract change form with Remodel USA, which changed the contract price to \$23,093.00. (Exh. C-3)

On June 13, 2002, Remodel USA obtained building permit number 020164B0050 for the construction of a two tier deck at the subject property. (Exh. W-2)

In late June 2002 or early July 2002, Remodel USA commenced work. (Exh. C-1)

On July 1, 2002, the footing inspection was approved. (Exh. W-1)

A couple of weeks after July 24, 2002, Remodel USA partially installed the French doors and basement door. (Exh. C-1)

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1. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The contract used by Remodel USA in the transaction failed to contain subsections: (a), (e), and (h). (Exh. C-2)

2. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

As of March 24, 2004, Remodel USA failed to obtain additional permits for the installation of two windows and French doors. (Exh. I-4)

3. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The contract change form specified "Deck sizes 12 x 20, 9 x12. 2 step down between decks." (Exh. C-3)

Remodel USA shortened the deck at the subject property by 10 feet. (Exh. C-1)

Remodel USA failed to use written change orders, signed by all parties, for modifications to the scope of the work to be performed.

4. Board Regulation (Effective September 1, 2001)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

After August 10, 2002, Antoun noticed the French doors leaked during rainstorms. Antoun also noticed several items done incorrectly by Remodel USA. For example, Remodel USA cut joists in the deck structure and did not install flashing where the ledge board for the deck attached to the house, which caused water to leak in to the walls and damage the downstairs bathroom. (Exh. C-1)

On September 18, 2002, the final inspection was rejected because plan not on site, in violation of Section 108.5 of the Uniform Statewide Building Code ("USBC"). (Exh. W-1)

On October 8, 2002, Antoun sent Remodel USA a certified letter notifying Remodel USA it was forbidden to enter upon the subject property. (Exh. C-4 and R-1)

On January 21, 2004, the final inspection was rejected because of handrail, correct framing at rear door, first bay blocking missing, and lateral bracing. (Exh. W-1)

In a letter dated March 16, 2004, USPL notified Antoun he did not qualify for warranty coverage due to improper installation. USPL further described its observations of photographs of the deck installed by Remodel USA and recommended the entire deck be pulled up and reinstalled. (Exh. C-8)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On March 2, 2004, Investigator Sherell Queen, the Board's agent, made a written request to Remodel USA at the address of record of 9221 Hampton Overlook, Capital Heights, Maryland 20743, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by March 22, 2004. (Exh. I-5)

On March 23, 2004, the Board's agent contacted John Cherubim ("Cherubim") of Remodel USA. Cherubim told the Board's agent he received the March 8, 2004, letter and he would fax his response in a few days. (Exh. I-2) Following the conversation, the Board's agent sent Remodel USA a facsimile regarding the written response. (Exh. I-6)

On March 29, 2004, the Board's agent received a written response from Remodel USA. (Exh. R-1)

On April 1, 2004, the Board's agent contacted Remodel USA and spoke to Ray Marvel ("Marvel"), who agreed to send the Board's agent a revised response letter addressing the allegation in the complaint. (Exh. I-3)

On April 6, 2004, the Board's agent made a written request to Remodel USA, via facsimile, requesting a complete written response and supporting documents to the complaint filed with the Board and specific questions as outlined in the letter. The Board's agent requested the written response be received by April 12, 2004. (Exh. I-7)

As of April 27, 2004, Remodel USA failed to provide complete information to an investigator in the investigation of a complaint filed with the Board.



**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Brian K. Barnett, t/a B & T Ent

File Number: 2004-01908  
License Number: 2705033280

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Brian K. Barnett, t/a B & T Ent ("B & T"), to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Terry Barnette ("T. Barnette"), on behalf of B & T; Respondent; Jeffrey and Nancie Lightner ("the Lightners"), Complainants; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

During the IFF, T. Barnette stated Brian Barnette is his son. T. Barnette also stated Brian Barnette took the exam and obtained the license, but he owned and operated the company. Brian Barnette worked part time during the time of this transaction, but no longer works with him now. In addition, T. Barnette stated he spoke to the investigator not Brian Barnette. T. Barnette further stated B & T no longer exists and he has been unemployed since November 2004.

Although T. Barnette takes responsibility for the actions regarding the Lightner contract, the permit was obtained using B & T's license; therefore, Brian Barnette is actually the responsible party for the work contracted for.

Count 1: Board Regulation (Effective January 1, 2003)

The name on the contract reflected the name B & T- Terry Barnette. The license was issued as Brian K. Barnett, t/a B & T Ent. B & T's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$200.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain five of the provisions required by the Board's regulation. B & T's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$300.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

In June 2003, the Lightners verbally agreed for additional work to be performed on the project. T. Barnette sent the Lightners a change order for the additional work, which had his signature, but not the Lightners.

During the IFF, T. Barnette stated changes were made verbally. T. Barnette also stated the change order was for additional work, and the Lightners did not sign the change order because they refused to pay for the extras.

B & T's failure to obtain signed, written change orders modifying the scope of work, materials, costs, and estimated completion date of the project is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$300.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

The work performed by B & T exceeded the scope of the building permit. The City of Virginia Beach posted a stop work order at the site for failure to obtain proper permits.

During the IFF, T. Barnette stated he was not aware the building permit was improper and a stop work order was issued.

B & T's failure to obtain required building permits is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

In March 2003, the Lightners entered into a contract with B & T to perform renovations at the subject property. The contract specified work would take no longer than ninety (90) days. Work on the project began in April 2003.

As of August 2003, work at the subject property was not complete. In October 2003, the Lightners sent T. Barnette a letter, requesting work be completed. The Lightners also obtained an estimate from another contractor to complete the work, which consisted of numerous items not completed by B & T. In February 2004, T. Barnette stated B & T would return and finish the work if the Lightners paid \$14,150.00 towards the original contract amount and requested changes.

During the IFF, T. Barnette stated he stopped work in August 2003 because the Lightners would not pay for extra work as outlined in the change order.

B & T's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

The Lightners paid B & T a total of \$51,000.00 towards the contract. In October 2003, the Lightners were informed that it would cost an additional \$49,700.00 to complete the work at the subject property.

B & T's retention of funds paid for work not performed, or performed in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 7: Board Regulation (Effective January 1, 2003)

In October 2003, in the Virginia Beach General District Court, the Lightners obtained a judgment against B & T, in the amount of \$15,000.00. B & T failed to satisfy the judgment.

During the IFF, T. Barnette stated he is not able to pay the judgments.

B & T's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 8: Board Regulation (Effective January 1, 2003)

In October 2003, in the Virginia Beach General District Court, the Lightners obtained a second judgment against B & T, in the amount of \$15,000.00. B & T failed to satisfy the judgment.

During the IFF, T. Barnette stated he is not able to pay the judgments.

B & T's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

\_\_\_\_\_  
William Paulette  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: June 11, 2004 (revised September 8, 2004)

FILE NUMBER: 2004-01908  
RESPONDENT: Brian K Barnett t/a B & T Ent  
LICENSE NUMBER: 2705033280  
EXPIRATION: August 31, 2004

SUBMITTED BY: Robert Hansel  
APPROVED BY: David Dorner

COMMENTS:

Brian K Barnett, t/a B & T Ent, is the Board for Contractor's license business name. Brian K Barnette is the Board for Contractor's responsible management name.

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Brian K Barnett, t/a B & T Ent ("B & T"), was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705033280).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violations of the Code of Virginia and/or the Board's regulations:

BACKGROUND:

On October 30, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Jeffrey and Nancie Lightner ("the Lightners") regarding Terry Barnette and B & T. (Exh. C-1)

On March 20, 2003, the Lightners entered into a written contract with B & T - Terry Barnette, in the amount of \$57,300.00, to perform renovations at 534 Pinewood Drive, Virginia Beach, Virginia. (Exh. C-2)

On April 28, 2003, B & T commenced work. (Exh. I-5)

On May 9, 2003, B & T obtained building permit number 200306122BO for the renovation work at the subject property. (Exh. C-14 and W-1)

In a written response received December 3, 2003, Terry Barnette of B & T acknowledges the contract entered into with the Lightners. (Exh. R-1)

On August 22, 1996, B & T was issued Class B Contractor's license number 2705032280 as a sole proprietorship. (Exh. I-1)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

B & T failed to operate under the name in which the license is issued.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
- a. When work is to begin and the estimated completion date;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by B & T failed to contain subsections: a, d, f, h, and i. (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

On June 21, 2003, the Lightners verbally agreed to additional work at a cost of \$4,212.00. (Exh. C-11)

On July 11, 2003, Terry Barnette sent the Lightners a written change order, in the amount of \$7,850.00, for additional work. The change order was signed by Terry Barnette but not the Lightners. (Exh. C-10)

On July 14, 2003, the Lightners received a letter from Terry Barnette regarding the length of the job. Terry Barnette stated weather and family matters resulted in the job taking longer. Terry Barnette further stated "My 90 (ninety) days wil not be up til 29<sup>th</sup> of July, then we had approximately 31 days of BAD weather. If we can work together we will get this done ASAP." (Exh. R-2)

On December 2, 2003, Brian Barnette of B & T stated he did not use written change orders for the changes requested by the Lightners. (Exh. I-3)

B & T failed to obtain written change orders, signed by all parties, for a modification to the scope of the work performed, materials, cost, and estimated completion date.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On December 5, 2003, John M. Coro, City of Virginia Beach Plans Examiner I, advised Investigator Robert Hansel, the Board's agent, the work exceeded the scope of the building permit. (Exh. W-1)

The City of Virginia Beach posted a Stop Work Order at the site for failure to obtain proper permits, in violation of Section 120.1 of the Uniform Statewide Building Code. (Exh. W-2)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The contract specified "This work is to consist of no more than 90 days, according to weather." (Exh. C-2)

On July 16, 2003, the Lightners sent Terry and Sarah Barnette a letter regarding the permits and completion of the work. (Exh. C-12)

The last day B & T performed work at the subject property was August 5, 2003. (Exh. I-5)

On October 2, 2003, the Lightners sent Terry and Sarah Barnette a letter requesting the work be completed. (Exh. C-13)

On October 15, 2003, the Lightners received a written estimate from HomeTown Designs to complete the following work at the subject property:

- Complete vinyl siding
- Remove and redo exterior trim material and trim out all windows
- Finish back deck, steps, and rails on new top floor
- Finish front porch and rails
- Install PVC plumbing and rains on new top floor
- Install two full showers on new top floor
- Install two toilets fixtures on new top floor
- Install two sinks with vanities, and fixtures on new top floor
- Install ceramic tile in two bathrooms



- Frame out and install two new windows and trim in front of new top floor
- Install new staircase from lower home to new top floor
- Install plaster board throughout new top floor
- Install interior doors and trim out in new top floor
- Trim out all interior trim in new top floor including window and base trim
- Install new heat pump for new top floor
- Install new electrical receptacles and switches, ceiling fans, and lights on new top floor
- Install new windows on existing home and trim out
- Install new carpet and padding on new top floor. (Exh. C-15)

On February 9, 2004, Brian Barnette of B & T stated he would return and finish the work if the Lightners paid \$6,300.00 on the original contract and \$7,850.00 for the changes. (Exh. I-4)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

On April 20, 2003, the Lightners paid Terry Barnette \$17,000.00 by check. (Exh. C-6 and C-7) On May 15, 2003, the Lightners paid Terry Barnette \$17,000.00 by check. On June 16, 2003, the Lightners paid Terry Barnette \$10,000.00 by check. On June 21, 2003, the Lightners paid Terry Barnette \$7,000.00 by check. (Exh. C-8 and C-9)

On October 10, 2003, the Lightners received a written estimate from HomeTown Designs, in the amount of \$49,700.00, to complete the work at the subject property. (Exh. C-15)

As of October 30, 2003, B & T failed to return money received for work not performed or performed in part.

7. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On October 20, 2003, in the Virginia Beach General District Court, Nancie Lightner was awarded a \$15,000.00 judgment against Terry Barnette and Sarah Barnete dba B & T Enterprises. (Exh. W-3) The judgment was based on "fraud committed by defendant." (Exh. W-3 and W-4)

As of July 16, 2004, B & T failed to satisfy the judgment. (Exh. W-3)

8. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On October 20, 2003, in the Virginia Beach General District Court, Nancie Lightner was awarded a \$15,000.00 judgment against Terry Barnette and Sarah Barnete dba B & T Enterprises. (Exh. W-5) The judgment was based on "fraud committed by defendant." (Exh. W-5 and W-6)

As of July 16, 2004, B & T failed to satisfy the judgment. (Exh. W-5)

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Brian K. Barnett, t/a B & T Ent

File Number: 2005-00178  
License Number: 2705033280

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Brian K. Barnett, t/a B & T Ent ("B & T") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Terry Barnette ("T. Barnette"), on behalf of B & T, Respondent; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

During the IFF, T. Barnette stated Brian Barnette is his son. T. Barnette also stated Brian Barnette took the exam and obtained the license, but he owned and operated the company. Brian Barnette worked part time for B & T, but no longer works with him now. In addition, T. Barnette stated he spoke to the investigator not Brian Barnette. T. Barnette further stated B & T no longer exists and he has been unemployed since November 2004.

Although T. Barnette takes responsibility for the actions regarding the Bridges contract, the license is held by Brian Barnette; therefore, Brian Barnette is actually the responsible party for the work contracted for.

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain four of the provisions required by the Board's regulation. B & T's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$300.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

In March 2004, in the Virginia Beach General District Court, Kenneth and Ruth Bridges ("the Bridges") were awarded a judgment, in the amount of \$13,162.00 against Terry Barnette. B & T failed to satisfy the judgment.

B & T's failure to satisfy the judgment is a violation of Board Regulation 18 VAC 50-22-260.B.28. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

In August 2004, the Board's agent made two separate requests for a written response and supporting documents to the complaint filed with the Board. B & T failed to respond to the Board's agent. B & T's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

By:

\_\_\_\_\_  
William Paulette  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

**MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: October 8, 2004 (revised October 27, 2004)

FILE NUMBER: 2005-00178  
RESPONDENT: Brian K. Barnett, t/a B & T ENT  
LICENSE NUMBER: 2705033280  
EXPIRATION: August 31, 2004

SUBMITTED BY: Shelby Smith Hill  
APPROVED BY: David C. Dorner

COMMENTS:

On August 18, 2003, Kenneth L. Bridges ("Bridges") filed a complaint regarding Brian K. Barnett, t/a B & T Ent. After the investigation of File No. 2004-00822, Bridges provided additional information regarding a judgment. The only issue in File No. 2004-00822 related to the failure to include the minimum specifications in the contract; therefore, the contract issue in File No. 2004-00822 was consolidated into this file.

\*\*\*\*\*

Brain K Barnett ("Barnett"), t/a B & T ENT, was at all times material to this matter a licensed Class B Contractor in Virginia (No. 2705033280).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On June 1, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received information from Ruth Bridges ("Bridges") regarding Barnett. (Exh. C-1)

On March 7, 2003, Kenneth and Ruth Bridges ("the Bridges") entered into a written contract with B & T Enter, in the amount of \$36,750.00, to build a 14' x 28' room addition at 531 Pinewood Drive, Virginia Beach, Virginia. The contract was signed by Terry Barnette and indicated an address of 329 Green-Moore Drive, Chase City, Virginia 23924. (Exh. C-2)

On August 22, 1996, Barnett was issued Class B contractor's license number 2705033280 as a sole proprietorship. The address of record is 329 Greene Moor Road, Chase City, Virginia 23924. (Exh. I-1)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Barnett in the transaction failed to contain subsections: (d), (f), (h), and (i). (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

28. Failure to satisfy any judgments.

FACTS:

On March 2, 2004, in the Virginia Beach General District Court, the Bridges were awarded a \$13,162.00 judgment against Terry Barnette, t/a B & T Enterprises. The judgment was based failure to complete terms of contract regarding addition to house. (Exh. C-1 and I-6) As of October 8, 2004, B & T Enterprises failed to satisfy the judgment. (Exh. I-6)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On August 2, 2004, Investigator Shelby Smith-Hill, the Board's agent, made a written request to Barnett at the address of record of 329 Greene Moor Road, Chase City, Virginia 23924, and an individual address of 726 Fort Mitchell Road, Chase City, Virginia 23924, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by August 15, 2004. (Exh. I-2)

On August 9, 2004, the letter sent to 726 Fort Mitchell Road, Chase City, Virginia 23924, was returned by the United States Postal Service ("USPS") and was marked "Not Deliverable as Addressed – Unable to Forward." (Exh. I-3)

On August 16, 2004, the Board's agent made a second written request to Barnett at the address of 329 Greene Moore Drive, Chase City, Virginia 23924, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the written response be received by August 27, 2004. (Exh. I-4)

On August 19, 2004, the Chase City, Virginia Postmaster certified mail is delivered to Terry Barnett or Brian Barnett at 329 Greene Moore Drive, Chase City, Virginia 23924. (Exh. I-5)

As of October 8, 2004, Barnett failed to respond to an investigator seeking information in the investigation of a complaint filed with the Board.

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Millennium Quests Inc., t/a American Dream Consultants (Norfolk CI)

File Number: 2004-01775  
License Number: 2705069130

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Millennium Quests Inc., t/a American Dream Consultants ("American Dream") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Stephen and Belinda Roberts ("the Roberts"), Complainants; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member. Neither Tonya Copeland, Responsible Management for American Dream, nor anyone on its behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Based on the testimony during the IFF, I believe American Dream's actions are egregious and do not represent the type of behavior we expect of licensees.

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain two of the provisions required by the Board's regulation. American Dream's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$200.00 be imposed.



Count 2: Board Regulation (Effective January 1, 2003)

In April 2003, the Roberts contracted with American Dream to perform renovations at the subject property. The contract specified work would begin on or before April 14, 2003, and be completed on or before July 1, 2003. The contract also specified that any changes to the contract, including changes to the estimated completion date, were to be made in writing and signed by all parties.

After July 1, 2003, American Dream told the Roberts the addition would be completed by July 25, 2003. The Roberts requested a written change order to establish a new deadline of July 31, 2003, with penalties to be applied against American Dream if work was not completed by that date. American Dream declined the request, and offered to terminate the contract. American Dream later sent the Roberts an email with a new completion deadline of September 30, 2003. The Roberts never received a signed copy of the change order.

American Dream's failure to obtain a signed, written change order modifying the completion date is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$300.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

In October 2003, American Dream agreed to complete the kitchen before Thanksgiving, but did not do so. American Dream's failure to honor a verbal promise is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

American Dream began work in April 2003, and last performed work in late November 2003. American Dream failed to complete, or correct, several outstanding items. American Dream informed the Board's agent that it would complete the work if the Roberts agreed to its conditions.

American Dream's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

The Roberts paid American Dream a total of \$34,000.00 towards the contract amount of \$35,000.00. American Dream did not complete the work.

American Dream's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By: \_\_\_\_\_  
William Paulette  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: July 17, 2004 (revised October 18, 2004)

FILE NUMBER: 2004-01775  
RESPONDENT: Millennium Quests Inc., t/a American Dream Consultants  
(Norfolk CI)  
LICENSE NUMBER: 2705069130  
EXPIRATION: June 30, 2006

SUBMITTED BY: Robert Hansel  
APPROVED BY: David Dorner

COMMENTS:

A site visit was conducted by Investigator Robert\_Hansel on December 3, 2003.

\*\*\*\*\*

Millennium Quests Inc., t/a American Dream Consultants (Norfolk CI) ("American Dream"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705069130.)

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violations of the Code of Virginia and/or Board's regulations:

BACKGROUND:

On October 21, 2003, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Stephen and Belinda Roberts ("the Roberts") regarding American Dream. (Exh. C-1)

On April 14, 2003, the Roberts entered into a contract with American Dream, in the amount of \$35,800.00, to perform renovations at 577 Woodbine Lane, Virginia Beach, Virginia 23452. (Exh. C-2)

The contract specified "The work to be performed under this Contract shall commence on or before 14 Apr 03 and shall be substantially completed on or before 1 Jul 03." (Exh. C-2)

On April 15, 2003, American Dream commenced work at the subject property. (Exh. I-2)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by American Dream in the transaction failed to contain subsections: (f) and (h) contractor's classifications or specialty services. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

The contract specified "Any modifications to this contract which changes the cost, materials, work to be performed, or the estimated completion date must be made in writing and signed by all parties." (Exh. C-2)

On July 17, 2003, American Dream told the Roberts the addition would be completed by July 25, 2003. (Exh. C-3)

On July 22, 2003, the Roberts requested a written change order for the modification of the completion date. On July 23, 2003, the Roberts requested a written change order with a deadline of July 31, 2003, for completion of the addition and \$100.00 fines per day if not completed by July 31, 2003. (Exh. C-3)

On July 24, 2003, American Dream declined the Roberts' request for a written change and offered termination of Roberts' contractual obligation. (Exh. C-3)

On August 9, 2003, the Roberts requested a written change order with a deadline of September 1, 2003, for completion of the addition. (Exh. C-3)

On September 9, 2003, American Dream sent the Roberts an email regarding the change order the Roberts requested. The change order specified a completion date deadline of September 30, 2003 and a fine of \$50.00 per day for any days past the September deadline. As of October 21, 2003, the Roberts never received the signed copy of the change order in the mail, which American Dream said it sent on September 9, 2003. (Exh. C-3 and C-4)

American Dream failed to obtain a written change order, signed by all parties, for a modification to the completion date as specified in the original contract.

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On October 30, 2003, American Dream agreed to complete the kitchen before Thanksgiving. (Exh. W-1)

As of December 11, 2003, American Dream failed to complete the kitchen as promised. (Exh. W-1)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The last day American Dream performed work at the subject property was November 22, 2003. (Exh. I-2)

As of December 3, 2003, American Dream failed to complete or correct the following items:

- Kitchen ceiling is uneven, and not smooth;
- Took out a wall in the kitchen, and replaced it a different area, unevenly;
- Took out electrical light, and did not reconnect it;
- New floor tile is not level;
- An electrical outlet is needed in the front wall;
- Driveway needs to be redone;
- Fence and gate need to be replaced; and
- The dryer was not vented. (Exh. I-2)

In a written response dated December 8, 2003, Askew stated "Our position at this particular time is that the Robert's have forced us into a 'STOP WORK' status..." Askew further stated that American Dream would be willing to complete the project provided the Roberts agreed to American Dream's conditions. (Exh. R-1)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

The Roberts paid American Dream a total of \$34,000.00 in several payments. (Exh. I-2)

In a letter dated December 11, 2003, Nancy Moore, Investigator with the Office of the Commonwealth's Attorney in Virginia Beach, notified American Dream that the Roberts will be getting estimates from other companies to complete the work and present the estimates to American Dream for a refund. (Exh. W-1)

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Millennium Quests Inc., t/a American Dream Consultants (Norfolk CI)

File Number: 2004-02724  
License Number: 2705069130

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On November 23, 2004, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Millennium Quests Inc., t/a American Dream Consultants ("American Dream") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On January 25, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Margaret Bentley, Complainant; Leonard Bentley, Witness; Joseph Haughwout, Staff Member; and William Paulette, Presiding Board Member. Neither Tonya Copeland, Responsible Management for American Dream, nor anyone on its behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Based on the testimony during the IFF, I believe American Dream's actions are egregious and do not represent the type of behavior we expect of licensees.

Count 1: Board Regulation (Effective January 1, 2003)

In September 2003, Leonard and Margaret Bentley ("the Bentleys") entered into a contract with American Dream to perform renovations and improvements at the subject property.

During the IFF, Margaret Bentley stated the contract was signed by both the Bentleys and American Dream. Margaret Bentley also stated the contract she provided with the complaint, which was not signed by both parties, was the only copy she had.

Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.8.

Count 2: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain two of the provisions required by the Board's regulation. American Dream's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$200.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

Bentley verbally requested changes to the contract, to which American Dream agreed. American Dream's failure to obtain signed, written change orders modifying the scope of work and costs of the contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$300.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

During construction, American Dream did not mention lead or asbestos to Bentley, and did not take other necessary precautions. A few months after American Dream had commenced work, Bentley's son tested positive for elevated lead. In November 2003, inspections for lead and asbestos were conducted at the subject property. Test results revealed the presence of both lead and asbestos. The Norfolk Department of Public Health directed American Dream to perform lead and asbestos cleanup at the subject property. American Dream failed to do so.

During the IFF, Margaret Bentley stated based on the assessment from the Norfolk Department of Public Health there was lead and asbestos in the house and she was advised to move out of the house because of possible contamination.

American Dream's negligence in the practice of contracting is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

After the discovery of lead and asbestos at the subject property, American Dream stopped work.



During the IFF, Margaret Bentley stated American Dream did not complete the work. Margaret Bentley stated after the house was cleared of lead and asbestos, she and her husband moved back in and continue to perform work in an effort to complete the work.

American Dream's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

In February 2004, American Dream was criminally charged with failure to comply with a notice of violation. American Dream's failure to comply with the building code is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

\_\_\_\_\_  
William Paulette  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: September 3, 2004 (revised October 18, 2004)

FILE NUMBER: 2004-02724  
RESPONDENT: Millennium Quests Inc., t/a American Dream Consultants  
(Norfolk CI)  
LICENSE NUMBER: 2705069130  
EXPIRATION: June 30, 2006

SUBMITTED BY: Robert Hansel  
APPROVED BY: James Guffey

COMMENTS:

There is currently a criminal action pending against the contractor for failure to abate building code violations related to the discovery of asbestos and lead on the property.

\*\*\*\*\*

Millennium Quests Inc., t/a American Dream Consultants ("American Dream"), was at all times material to this matter a licensed Class A Contractor in Virginia (No. 2705069130).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On January 21, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Margaret Bentley ("Bentley") regarding American Dream. (Exh. C-1)

On September 2, 2003, Bentley entered into a written contract with American Dream, in the amount of \$46,600.00, to perform renovations and improvements at 116 41<sup>st</sup> Street, Norfolk, Virginia 23504. The contract was signed by Mark Askew ("Askew") on behalf of American Dream but was not signed by Bentley. (Exh. C-2 and R-1)

In September 2003, American Dream commenced work. (Exh. C-1)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

On July 19, 2004, Askew admitted that Bentley was supposed to send American Dream a copy of the fully executed contract, but never did. (Exh. I-5)

American Dream failed to obtain Bentley's signature on the written contract prior the commencement of work or acceptance of payments.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and

FACTS:

The contract used by American Dream in the transaction failed to contain subsections: (f); and (h) contractor's license expiration date, class of license, and classifications or specialty services. (Exh. C-2 and R-1)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

Bentley verbally requested the following changes to the original contract:

- Replace bad wood in the kitchen ceiling, at a cost of \$1,000.00;
- Replace bad wood in the porch, at a cost of \$1,700.00; and
- Replace bad fascia boards, at a cost of at least \$1,000.00. (Exh. I-6)

American Dream failed to obtain written change orders, signed by both parties, for modifications to the scope of work to be performed and costs of the original contract.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

During the construction, American Dream did not mention lead or asbestos to Bentley, provide a Bentley with the lead pamphlet, use plastic sheathing or drop cloths, or clean up. (Exh. C-1)

A few months after American Dream commenced work, Bentley's son tested positive for elevated lead. (Exh. C-1)

On November 6, 2003, the Norfolk Department of Public Health ("the Health Department") conducted a limited lead risk assessment of the subject property. (Exh. R-4)

On November 10, 2003, Applied Laboratory Services of Norfolk performed a limited screen asbestos inspection. (Exh. R-4)

On November 14, 2003, lead dust samples were collected from obvious areas of construction dust at the subject property. On November 17, 2003, the lead dust samples were analyzed by Schneider Laboratories. (Exh. R-4)

In a letter dated December 17, 2003, the Health Department notified American Dream that "[h]igh levels of lead dust have been identified throughout the structure on furniture, carpeting, food preparation services and floors due to renovations involving demolition of walls." The Health Department also notified American Dream, in regards to the asbestos inspections, that "[t]he entire structure could be contaminated due to the removal/disturbance' activities." The Health Department ordered American Dream to perform lead and asbestos cleanup by January 5, 2004. (Exh. R-4)

As of January 29, 2004, American Dream failed to abate the lead and asbestos at the subject property. (Exh. I-4)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

FACTS:

American Dream stopped work after asbestos and lead were discovered during the construction. (Exh. I-4)

As of January 20, 2004, American Dream failed to return to the subject property and complete the work contracted for. (Exh. C-1)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On February 11, 2004, American Dream was charged with failure to comply with a notice of violation, a Class 2 misdemeanor, in violation of § 27-6 of the Code of the City of Norfolk. (Exh. I-3)

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTEREST ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government**

1. Name: William Paulette
2. Title: Presiding Board Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on January 25, 2005
5. Nature of Personal Interest Affected by Transaction: \_\_\_\_\_

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

WAP  
Signature

1-25-05  
Date